

By Electronic Delivery

March 30, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1343
Proposed changes to Regulation E
Electronic Funds Transfer Act
74 Federal Register 28866

Dear Ms. Johnson:

Principal Bank welcomes the opportunity to comment on the proposed rules for amending Regulation E, which implements the Electronic Funds Transfer Act, as published in the Federal Register on January 29, 2009. We have reviewed the proposal and believe the following sections warrant additional consideration. Our comments follow below.

Overdrafts

Proposal

To assist consumers in understanding how overdraft services provided by their institutions operate and to ensure that consumers have the opportunity to limit the overdraft costs associated with ATM withdrawals and one-time debit card transactions where such services do not meet their needs. Payment of checks, preauthorized EFTs, and ACH transactions are not included in this proposal. Two alternative methods are being proposed – one allowing for an opt-in for such services and one allowing for an opt-out of such services.

Comments

Providing the ability for consumers to opt-out of the payment of overdrafts due to ATM withdrawals or one-time debit card transactions is not necessary for Principal Bank, as we do not add any “overdraft protection” balances to the customer’s available balance. If they did not have an adequate available balance at the time of the transaction, the transaction could not be completed. Therefore, we strongly agree with the exception to the notice requirement for institutions that have a policy and practice of declining any ATM withdrawals or debit card transactions when the institution has a reasonable belief that the consumer does not have sufficient funds available in their account to cover the requested transaction at the time of authorization. Additionally, we would support a requirement of language in the institution’s Reg E initial disclosures to this effect. Otherwise, in the absence of either an opt-in or opt-out notice, consumers may not understand how their bank is complying with the regulatory changes and be more apt to

register complaints about legitimate fees. We would encourage the Board to develop model safe harbor language to accompany this exception that allows for overdraft fees associated with other types of transactions, such as preauthorized EFTs or ACH transactions.

We also support the “reasonable belief” and the “paper-based debit card transaction” exceptions, but believe explaining to consumers why they still might incur an overdraft fee from a debit card transaction could be difficult. The four examples provided as “reasonable belief” exceptions along with information about paper-based transactions and other possible exceptions should be included in model safe harbor language, either specifically or generally, for any notice or disclosure requirements.

We would also strongly encourage the Board to reconsider how small dollar transactions where the merchant does not request authorization should be addressed. Financial institutions have no control over merchant practices, and attempting to segregate these transactions and waive any incurred fees could be costly. This essentially requires financial institutions to pay these overdrafts without compensation and undermines their ability to exercise discretion.

If institutions will be able to vary terms, conditions, and features for a product that does not permit payment of ATM and one-time debit card overdrafts, then additional guidance should be provided as to what would constitute a product “discouraging a reasonable consumer from exercising his or her right to opt out of the payment of such overdrafts.” What is reasonable to one regulator may not be reasonable to another regulator, and such lack of clarity could create inconsistencies in how the regulation is enforced.

Finally, it is imperative that customer communications do not undermine our clearly stated position that the payment of overdrafts is at our discretion regardless of any options presented to consumers.

Debit Holds

Proposal

To prohibit institutions from assessing an overdraft fee where the overdraft would not have occurred but for a debit hold placed on funds in an amount that exceeds the actual transaction amount and where the merchant can determine the actual transaction amount within a short period of time after authorization of the transaction (for example, fuel purchases at a gas station). The prohibition would not apply if the institution adopts procedures designed to release the hold within a reasonable period of time.

Comments

The issues surrounding debit holds is complicated, and not easily understood by anyone except the most experienced operations personnel. The targeted approach outlined in the proposal is commendable because hitting consumers with an overdraft fee when they really had available funds is not anyone’s desire. However, the many exceptions in the proposal could actually further confuse consumers, especially given how this section would work with any opt-in or opt-out requirements above. Additionally, system

programming or manual monitoring of these issues by bank personnel would be extremely onerous and costly. We would recommend that these issues continue to be handled by financial institutions as consumers bring such problems to their attention to deal with on a case-by-case basis, and that this process continue to be reviewed and improved between merchants and payment systems. At the least and to the extent possible, the regulation should place some requirements on merchants for more timely submission of actual transactions.

Conclusion

We would suggest that in lieu of extensive opt-out or opt-in notices, financial institutions could simply be required to disclose to consumers how overdrafts *could* be generated in their accounts given the institutions' systems, policies, and procedures, and then leave it to the consumers to responsibly manage their accounts.

To the extent that any of the proposals are finalized, we would encourage adequate time be provided to implement any requirements, as programming, training, and communication may be extensive. Additionally, current fee structures and payment practices may need to be reviewed to determine if the new requirements would require changes to cover our costs and risks. Thank you again for providing the opportunity to comment.

Please forward any questions to the undersigned at 515-883-9190.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Lorenz", with a long horizontal flourish extending to the right.

Jill Lorenz
Principal Bank Compliance Manager